IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/10/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ
AND
THE HONOURABLE MR.JUSTICE T.V.MASILAMANI

Criminal Appeal No.337 of 2002

Shanmugam .. Appellant/Accused

-Vs-

State rep. by
Inspector of Police,
Sembanarkoil Police Station. .. Respondent/Appellant

Criminal Appeal against the judgment dated 5.2.2002 rendered
in S.C.No.182 of 2001 on the file of Principal Sessions Judge, Nagapattinam.

!For Appellant : Mr.V.Sairam

^For Respondent : Mr.E.Raja,
Addl.Public Prosecutor.

:J U D G M E N T
(Judgment of the Court was delivered by V.KANAGARAJ,J)

This Criminal Appeal is directed against the judgment dated 5.2.2002 rendered in S.C.No. 182 of 2001 by the Court of Principal Sessions Judge, Nagapattinam, thereby convicting the appellant who was the sole accused before the trial Court for the commission of offence punishable under Sections 449 and 302 IPC and sentencing him to undergo R.I. for 7 years and to pay a fine of Rs.1,000/-, in default to undergo R.I. for one year for the offence punishable under Section 449 I.P.C. and life imprisonment and a fine of Rs.1,000/-, in default to undergo R.I. for one year for the offence under Section 302 I.P.C.

2. The charge as framed against the appellant/accused before the trial Court was that the father of the appellant/accused and the father of the deceased Rajendran are brothers; that the accused, the deceased Rajendran and his brother Jayaraman were living under the same roof at Door No.3/23, Melappathi East Street; that because the appellant/accused suspected illicit intimacy in between his wife Thamizharasi and the deceased Rajendran for some days prior to the date of occurrence, there was a wordy quarrel between the appellant/accused and the deceased Rajendran at about 11.00 a.m.

on 10.7.2000 and at that time, the appellant/accused revealed that "my anger will come down only if I kill you".

3. The further charge was that on 11.7.2000 at about 5.30 a.m. while the deceased Rajendran was sleeping at his residence at Melappathi, the appellant/accused took out a crowbar and hit him on the left side of the head i.e. on the temporal region thus causing grievous injury, as a result of which, with profuse bleeding he died a little later and hence the charge for the commission of offence punishable under Sections 449 and 302 I.P.C. against the appellant/accused before the trial Court.

4. Based on the above charge, following all the procedural aspects which are necessary in the circumstances of the case, the Court of Principal Sessions Judge, Nagapattinam, having conducted a full trial, in which the prosecution, whose burden it is to prove the offence against the appellant/accused beyond all reasonable doubts as required under law, has examined 12 witnesses as P.Ws.1 to 12 for oral evidence, has marked 18 documents as Exs.P.1 to 18 for documentary evidence, further marking 8 Material Objects as M.Os.1 to 8 and on the part of the appellant/accused neither any witness has been examined for oral evidence nor any document has been marked for documentary evidence. The Court of Principal Sessions Judge, Nagapattinam, having considered all the materials made available before it and having appreciated the evidence placed on record has ultimately arrived at the conclusion to hold the appellant/accused guilty of the offence punishable under Sections 449 and 302 IPC and has convicted and sentenced him to undergo R.I for 7 years and a fine of Rs.1000/-, in default to undergo R.I. for one year for the offence punishable under Section 449 I.P. C. and life imprisonment and a fine of Rs.1000/-, in default to undergo R.I. for one year for the offence punishable under Section 302 I. P.C. The fine is reported to have been paid.

5. It is this judgment of conviction and sentence passed by the Court of Principal Sessions Judge, Nagapattinam, as per its judgment dated 5.2.2002 which is under challenge before this Court in the above Criminal Appeal.

6. During arguments, learned counsel for the appellant would submit that the appellant has inflicted only one injury on the head of the deceased and that since the appellant accused has been deprived of the fear of self control by grave provocation, caused the death of the deceased and hence the conviction under Section 302 I.P.C. cannot be sustained, since it is a case falling under exception (1) of Section 300 I.P.C. that is culpable homicide not amounting to murder and hence he would pray to set aside the conviction and sentence rendered by the trial court and modify the same in to Section 304-I I.P.C.

7. Though this Court is not able to cause interference into the conclusions arrived at by the Court of Sessions, to the effect that the appellant only caused the death of the deceased at the time place and in the manner alleged on the part of the prosecution, since the same came to be proved before the trial Court thus holding the appellant/ accused guilty of

the offence of causing the death of the deceased is concerned. However, the question that has to be gone into is one whether the offence perpetrated on the part of the appellant/accused would fall under Section 302 I.P.C. so as to warrant a conviction under that particular section and sentence of life imprisonment or is it a case that would fall under Section 304 either part I or II and therefore, this Court is to go into this vital aspect to the position to suit the facts and circumstances and the evidence let in. The Honourable Apex Court in Shanmugam v. State of Tamil Nadu (AIR 2003 S.C 209) has held:

" The nature of injuries and the medical evidence showing that the bodily injuries inflicted on the deceased were of such nature that they were likely to cause death. There can be no doubt that the accused intended to cause bodily injury on the deceased has to be necessary imputed to accused . Accused liable to be convicted under Section 304 part I."

8. No doubt that the offence has been committed on the part of the appellant since he suspected illicit intimacy in between the deceased and his wife. Even though no strong materials are available to suggest that there had been any such illicit intimacy in between the two as it has been preying heavily in the mind of the appellant, some how or other since they both were living in the family under one and the same roof, the appellant had developed the mental inertia and without any valid reason to offer to entertain such suspicion in his mind the appellant had become somewhat a depressed man in suspecting the very fidelity of his own wife in relation to the deceased and in spite of many clarifications rendered on the part of the deceased also that there had been absolutely no reason for the appellant to think in that line, still, without being able to getover the thought that had entered into his mind, ultimately he had committed the offence by hitting the deceased with

crowbar on the left temporal region of his head while he was sleeping and causing grievous injury, as a result of which the deceased with profuse bleeding died a little later.

9. However, this Court in further consideration of the fact that though no provocation has been offered on the part of the deceased or by anyone else for the matter, still, since the appellant was under the constant thinking that the deceased was having some illicit connection with his wife, acquired and sustained the provocation in himself which ultimately resulted in causing the death of the deceased in the manner aforementioned and therefore, this is a case which could better be brought under exception (1) of Section 300 I.P.C. committing the offence under grave provocation and this Court is also of the view that to suit the facts and circumstances of the case this is a fit case that could be brought under `sustained provocation' so as to convict and sentence the appellant/accused under Section 304 part (I) I. P.c. since it is an offence as classified under culpable homicide not amounting to murder, since the act done on the part of the appellant/accused in causing the death of the deceased with the intention of causing death or causing such fatal injury which is likely to cause death and since such ingredients which are required to bring the case under any of the four clauses falling under

Section 300 I.P.C., are lacking, conviction under Section 302 I.P.C. cannot sustain and as already discussed and decided since it is a case falling under exception (1) of Section 300 that is culpable homicide not amounting to murder, on reason that the appellant accused has been deprived of the fear of self control by grave provocation, caused death of the deceased, it is only reasonable to sustain the conviction and sentence bringing the case under Section 304-I I.P.C and hence the following judgment:

In result,

(i) the conviction and sentence passed by the Court of Principal Sessions Judge, Nagapattinam by the judgment dated 5.2.2002 rendered in S.C.No.182 of 2001 under Section 302 I.P.C. is set aside and instead the appellant/accused is convicted under Section 304-I I.P.C. and sentenced to undergo R.I. for 8 years instead of the sentence of life imprisonment;

(ii) that excepting for the above modification either the fine amount of Rs.1000/- imposed and paid or the sentence of R.I. for 7 years for the offence punishable under Section 449 I.P.C. as imposed against the appellant/accused by the trial Court are left undisturbed;

(iii) it is further ordered that both the sentences would run concurrently.

(iv) the above Criminal Appeal is partly allowed to the extent indicated above.

Index:Yes
Internet:Yes

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To
1. The I Additional Sessions Judge cum Chief Judicial Magistrate, Coimbatore.
2. The I Additional Sessions Judge cum Chief Judicial Magistrate, Coimbatore, through the Prl.Sessions Judge, Coimbatore.
3. The Inspector of Police, Udumalpet Police Station, Udumalpet.
4. The Superintendent, Central Prison, Coimbatore.
5. The District Collector, Coimbatore.
6. The Director General of Police, Chennai-4.
7. The Public Prosecutor, Chennai.